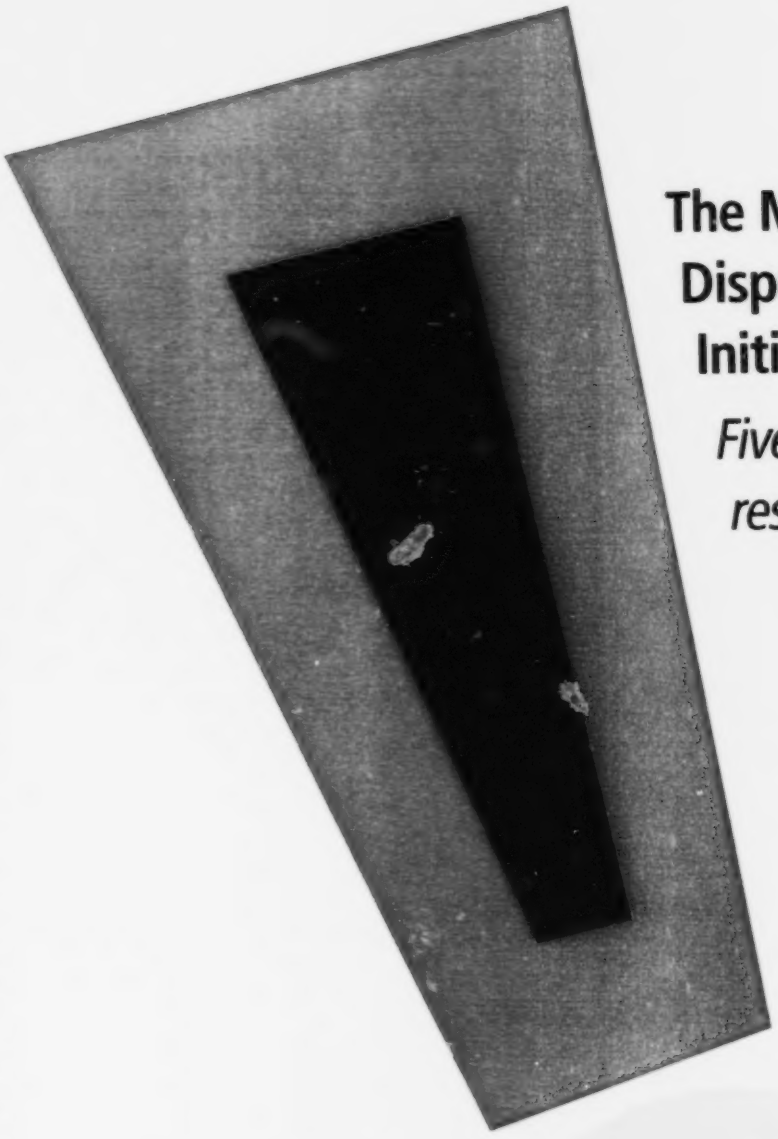

The Municipal Dispute Resolution Initiative

Five years of resolving disputes together

Let's resolve

Alberta
MUNICIPAL AFFAIRS

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Let's Resolve: The Municipal
Dispute Resolution Initiative

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Executive Summary

In 1999, the Municipal Services Branch of Alberta Municipal Affairs introduced a program to facilitate intermunicipal cooperation and self-directed dispute resolution. The program came to be called *Let's Resolve*. This five-year overview describes the program's component activities and identifies current trends in municipal dispute resolution.

Let's Resolve: The Municipal Dispute Resolution Initiative has been involved in 30 mediations over the past five years. With a success rate of over 90 percent—and the resulting major cost savings for municipalities—the initiative is a key contributor to Alberta Municipal Affairs' vision of creating viable, responsive and well-managed local governments. The first of its kind in Canada, the initiative was awarded Premier's Awards of Excellence in 2000 and 2002, in recognition of its benefits and its business model.

Highlights of the past five years include:

- **Intermunicipal mediations** – Collaboration with 74 municipalities and two regional authorities in 30 mediations. Mediation topics included annexation, regional cooperation, shared services and land use planning.
- **Ongoing education initiatives** – Partnership with Alberta Agriculture, Food and Rural Development to conduct over 25 workshops ("Finding Agreement on Difficult Issues") at locations throughout Alberta.
- **Mentoring partnerships** – Working with representatives of the Alberta Association of Municipal Districts and Counties, the Local Government Administration Association and the Alberta Rural Municipal Administrators Association to introduce the Peer Mentoring project.
- **Local dispute resolution** – Developing the Local Dispute Resolution Initiative in partnership with the Alberta Association of Municipal Districts and Counties and the Alberta Urban Municipalities Association.
- **Presentations** – Numerous program presentations to groups as diverse as a visiting delegation from the Harbin (China) Conciliation Centre, the Municipal Law Subsection of the Canadian Bar Association's Northern Alberta chapter, a delegation from Ukraine and the Alberta chapter of the Canadian Institute of Planners; presentation to the 2nd Vienna Conference on Mediation held in 2001; regular presentations to the Alberta Association of Municipal Districts and Counties and the Alberta Urban Municipalities Association.

Introduction

Disputes are a fact of municipal life, in good times and bad. Even in a thriving and increasingly diversified local economy, local government decision-makers must balance increasing demands for services with demands for lower taxes. When the local economy struggles, local governments must balance the need to maintain existing services with the reality of decreasing revenues. Finding and maintaining this delicate balance can create stress within the municipality and lead to conflict among stakeholder groups.

Municipal leaders may also have to consider the interests of municipalities and stakeholders from outside their municipal boundaries. Intermunicipal disputes can often reflect a very real, underlying conflict between values and philosophies. Whereas a town might value diversity of programs and services, a rural area might give priority to self-sufficiency, for example. Broad and unacknowledged differences can remain a divisive influence even long after a specific issue itself has been resolved by adversarial means.

Conflicts and their consequences make it essential for local government officials to reach decisions in a collaborative and cooperative manner. A clear, collaborative dispute resolution process can help municipalities and stakeholders develop unique solutions to address the unique needs of the community. It can also reduce the level of uncertainty and frustration associated with the decision-making process.

In 1999, the Municipal Services Branch of Alberta Municipal Affairs introduced the Municipal Dispute Resolution Initiative. This program facilitates intermunicipal cooperation and self-directed dispute resolution. See Appendix A: Background for more information about how this program came into being. In its first five years, the program has grown to include three service components as well as administrative, marketing and mentoring support. Most significantly, it has introduced a model of dispute resolution by which municipalities throughout the province can come to solutions that meet their unique interests.

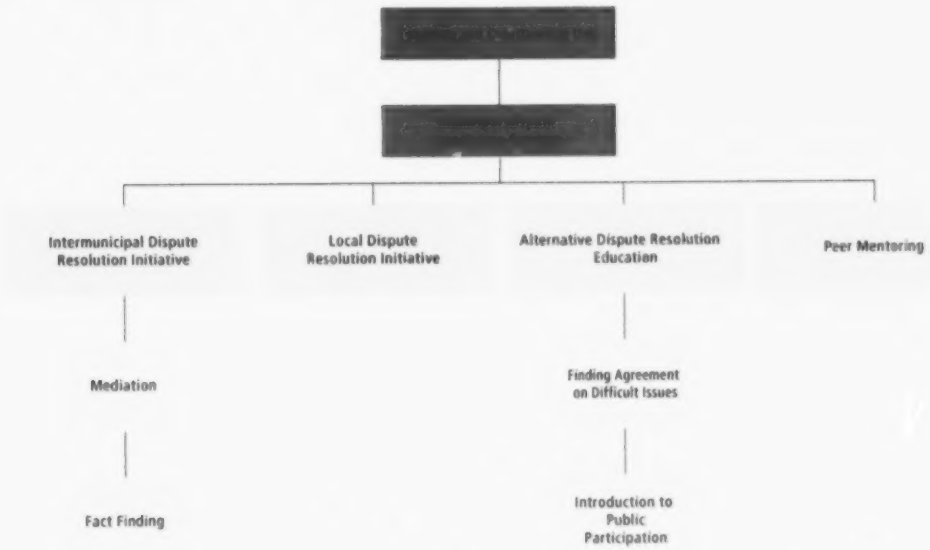
Component Activities of *Let's Resolve*

The Planning and Coordination Unit of Alberta Municipal Affairs works with municipalities in the areas of planning advice, interagency projects, special projects and strategic issues. The Municipal Dispute Resolution Team supports this role by providing three *Let's Resolve* service components:

- Intermunicipal Dispute Resolution Initiative
- Local Dispute Resolution Initiative
- Alternative Dispute Resolution Education

The mission, vision and values that guide the program are outlined in Appendix B: Program Philosophy. Personnel for the various components are drawn from the Planning and Coordination Unit based upon the expertise required (Figure 1). The Planning and Coordination Unit also provides administration and marketing support for *Let's Resolve* programs. In addition, a peer mentoring program offers conflict management advice to elected officials and municipal administrators across the province. The mentoring program was initially established in partnership with the Alberta Association of Municipal Districts and Counties, the Local Government Administration Association and the Alberta Rural Municipal Administrators. It now also includes the Alberta Urban Municipalities Association.

Figure 1: Municipal Dispute Resolution Initiative Components



Component Activities of *Let's Resolve*

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Figure 1: Municipal Dispute Resolution Initiative Components

Intermunicipal Dispute Resolution

Municipalities and municipal organizations often resort to traditional rights-based methods to resolve conflict. This adversarial process, which often involves a formal hearing, can be costly in terms of time and money (see Figures 8a & 8b, p. 9) as well as harmful to the future working relationships of the parties involved.

The purpose of the Intermunicipal Dispute Resolution Initiative is to encourage municipalities experiencing conflict with their municipal neighbours to use mediation or other dispute resolution alternatives to resolve the conflict, rather than referring the issue to a higher authority.

The Intermunicipal Dispute Resolution Initiative is a voluntary program that consists of:

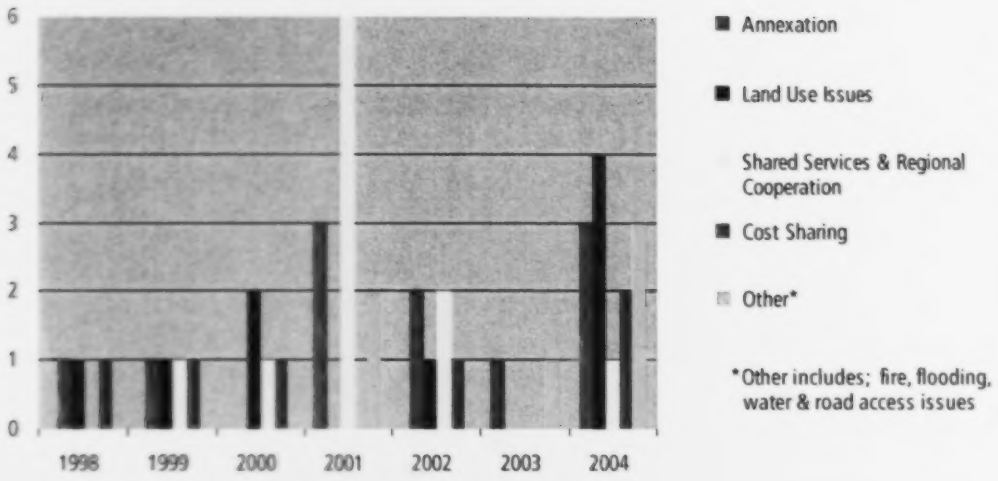
- **Conflict Assessment** – *Let's Resolve* program personnel work with the municipalities to determine whether mediation or some other type of conflict resolution method would be appropriate for the situation.
- **Convening Services** – After the parties in the dispute decide on the course of action they wish to take, program personnel ensure all the prerequisites are in place for the dispute resolution process.
- **Roster of Qualified Mediators** – With the assistance of the Alberta Association of Municipal Districts and Counties, the Alberta Urban Municipalities Association and the Alberta Arbitration and Mediation Society, a roster of qualified mediators has been developed.
- **Shared Mediation Costs** – Where appropriate, *Let's Resolve* provides part of the funding for mediation or other alternative dispute resolution techniques.
- **Fact-Finding Service** – Parties in the dispute may request a neutral fact-finder's report detailing the fact-finder's opinion of what a judge or arbitrator would decide in that case.
- **Satisfaction Surveys** – Surveys to measure satisfaction with the process are sent out to participants within three months of completing the mediation.

TYPES OF MEDIATION ACTIVITIES UNDERTAKEN

Within the first five years of the program there were 30 mediations involving some 74 municipalities. The issues dealt with during the mediation process have been wide and varied. While the initial impetus for the program was to give municipalities an opportunity to resolve disputes that would normally go to the Municipal Government Board, municipalities are now using the program to resolve a much wider range of disputes.

Disputes resolved have centered on issues as varied as annexation, cost sharing, provision of seniors services, road access and land use planning (Figure 2).

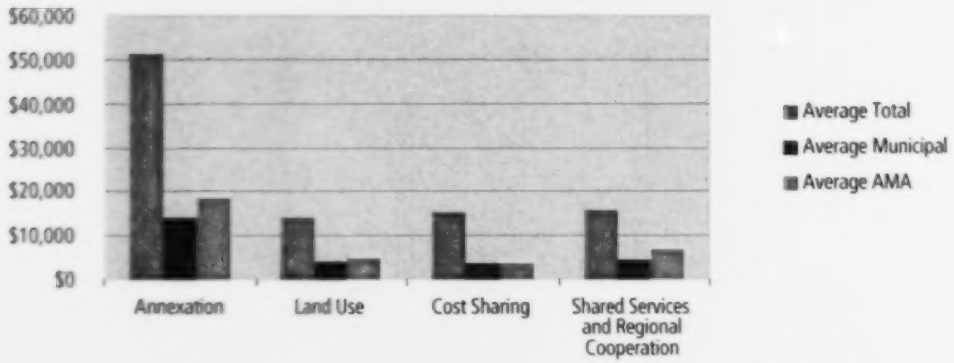
Figure 2: Mediation Activity by Year



MEDIATION COSTS

Financial support for the program has resulted in Alberta Municipal Affairs contributing a total of just over $260,000 in shared mediation costs over the past five years. Municipal contributions over this same period were about $170,000 in total. Figure 3 shows the types of mediations undertaken and their average costs. Costs to municipalities, as well as the time involved, have varied considerably. The shortest mediation involved an annexation issue, which was resolved within a half-day. The longest mediation, also dealing with annexation, required 40 days of negotiation to resolve.

Figure 3: Mediation Activity by Average Cost 1999-2004



While it has been difficult to do a cost–benefit analysis of the mediation program as a whole, specific disputes help make the case for meditation. We know, for example, that one municipality spent $47,000 on external legal and technical expertise to contest a land use issue before the Municipal Government Board. Another municipality assessed their costs and determined that they spent $134,000 for internal legal and technical expertise in contesting a land use dispute. Figure 4 provides information obtained from four municipalities regarding their costs associated with hearings in four different disputes.

Figure 4: Municipal Costs for Tribunal Hearings

Type of Dispute	Cost to Municipality
Municipality 1: Land use appeal	$47,000
Municipality 2: Land use appeal	$134,000
Municipality 3: Annexation	$127,164
Municipality 4: Annexation	$237,766

CONVENING PROCESS

In 2001, the convening process of the mediation was modified to allow for additional training and orientation for the participants. Mediators now schedule a half-day session with the full municipal council as well as the chief administrative officer (CAO) to explain the mediation process and to gain a clear understanding of the issues that the council believes are to be resolved. This session provides an opportunity for the full council to gain an understanding of both the process and the mediators. In addition, the mediators will spend three to four hours with the individual negotiating teams, providing training in interest-based negotiation. Council will normally select two of their members as well as the CAO to serve on the negotiating team.

A special session was held in 2003 to examine mediations that deal with annexation applications. Participants included representatives from the Municipal Government Board and mediators and Ministry staff involved in annexation. Our objective was to identify unique circumstances that had to be addressed in conducting these types of mediations. One of the key findings was a need to ensure that the mediation process included mechanisms for input from impacted landowners. Municipalities and mediators now spend time in the initial stages of the negotiations detailing public involvement strategies and integrating these strategies into the actual negotiation process.

ROSTER OF QUALIFIED MEDIATORS

At the request of the stakeholders, a roster of mediators was developed to ensure that people mediating the dispute had adequate knowledge of municipal governance. Experienced mediators are invited to submit applications for inclusion on the roster. To date, nine individuals have been approved. Municipalities are free to choose a mediator who is not on the roster, if they so desire.

In all cases but one, municipalities chose to use mediators from the roster. Since the program's inception, one of our goals has been to increase the number of mediators with the requisite skills to meet the roster requirements. To that end, a mentoring program was established. This program allows trained mediators to gain intermunicipal experience by working with mediators on our roster. Since 1998, four individuals have participated in this endeavour. Costs for the mentoring program are borne by Alberta Municipal Affairs.

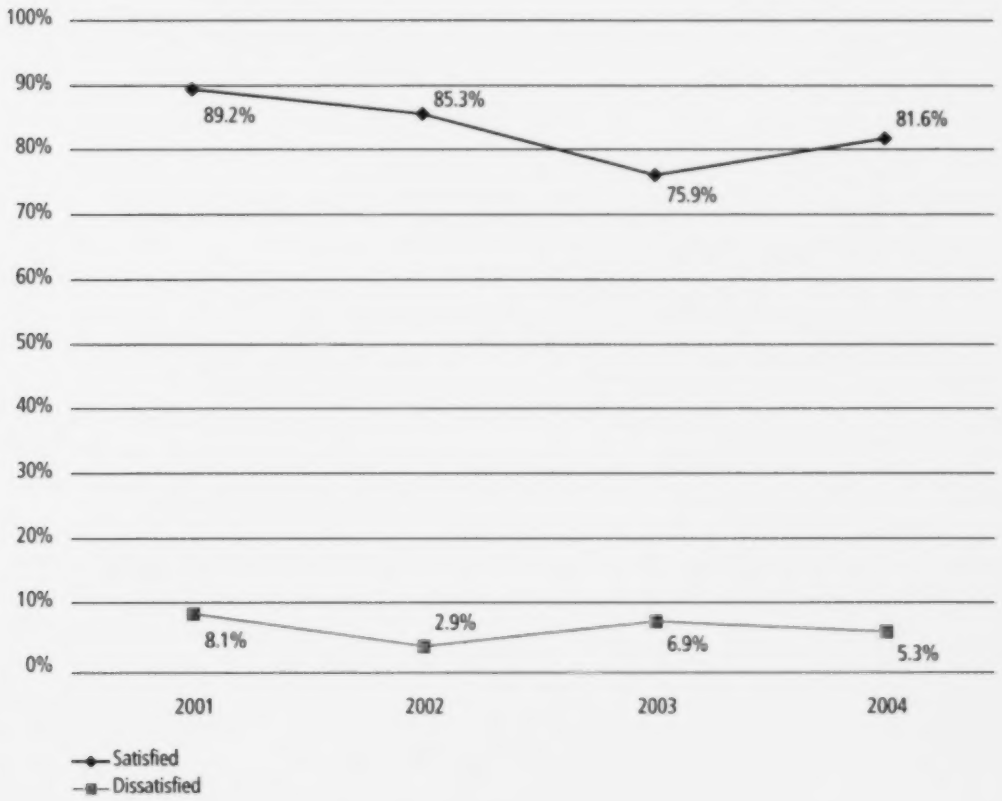
FACT-FINDING SERVICE

In 2003, a fact-finding service was added to the Intermunicipal Dispute Resolution Initiative. Its function is to provide parties-in-dispute with a neutral fact-finder's report detailing the fact-finder's opinion of what a judge or arbitrator would decide in that case. It is an informal process, funded by the Ministry, involving presentations to the fact-finder by the chief elected officer (CEO) and CAO of each of the municipalities involved. To date, this service has been used in one dispute, while in another situation the parties requested that the fact-finder function as an arbitrator.

SATISFACTION SURVEYS

Satisfaction surveys, which measure satisfaction with the process, are sent out to participants within three months of completing the mediation. Figure 5 indicates the rate of satisfaction with this process.

Figure 5: Level of Satisfaction with Mediation or Dispute Resolution Services



Local Dispute Resolution

This service component provides a grant of up to $35,000 to a municipality to undertake an assessment of current conflict management practices and to design new conflict management systems. A matching grant of $15,000 is available to municipalities to assist in the implementation of the consultant's recommendations.

The initiative is prepared to address the following types of conflicts:

- Public policy disputes – These arise from conflict regarding a municipal decision or policy (for example, disputes related to land use planning, environmental or natural resource protection, or fees for services).
- Disputes about policy implementation or municipal administration – This includes procedures for addressing complaints by residents or businesses regarding the delivery of municipal services.
- Organizational and administrative conflict – Norms and protocols are developed for addressing opposing views between municipal departments, between staff and elected officials, or between elected officials.

- Contractual disputes – These conflicts include disputes over contracts between the municipality and the provider of goods or services.
- Employment disputes – These situations involve non-unionized personnel and include issues that are outside of collective agreements and grievance procedures, as well as informal workplace disputes.
- Legal practices and alternatives to litigation – In consultation with the municipality's legal services staff or law firm(s), create alternatives to litigation.

Since the inception of the Local Dispute Initiative, Alberta Municipal Affairs has worked with seven individual municipalities and one group of four municipalities to design new conflict management systems. These include the cities of Cold Lake, Edmonton and St. Albert, the towns of Morinville, Canmore and Okotoks, and the counties of Sturgeon and Flagstaff, as well as the first pilot project with the Municipal District of Clear Hills. Figure 6 gives a breakdown of the operational areas examined in the various municipalities.

Figure 6: Scope of Local Projects

Municipality	**Organizational areas**					
	HR	Intermunicipal	Policy development	Policy implementation (bylaw, etc.)	Planning & development	Organizational conflict
County of Flagstaff					x	
Canmore	x	x	x	x	x	
Okotoks	x			x	x	
Cold Lake					x	
Morinville					x	
Sturgeon					x	
Morinville/Sturgeon/ St.Albert/Edmonton		x			x	
MD of Clear Hills	x	x	x	x	x	x

COST-BENEFIT ANALYSIS

As part of a broader survey in 2004, CAOs were asked about the types of disputes they experienced. Sixty percent of those who completed the survey have experienced some type of dispute (Figure 7).

Figure 7: Types of Disputes Experienced

The potential benefits of implementing new conflict management systems became evident when a group of municipal staff reviewed the costs associated with the traditional process. They calculated that 82 percent of their time addressing and resolving a particular land use issue was spent in the hearing and post-hearing process. In addition, 60 percent of the total costs were spent on the actual hearing. By implementing a new dispute resolution process, the municipalities not only introduced cost and time savings, but also provided opportunities to avoid the traditional adversarial approach associated with administrative tribunals.

Figure 8a: Time Spent on Intermunicipal Dispute Appeal Hearing

Traditional Hearing Process	**Prepare, Circulate & Adopt Plan**	**Notice of Appeal**	**Pre-hearing Negotiations**	**Appeal Hearing**	**Follow-up**
Key Activities	Originator: prepare, circulate and approve plan Other Parties: attend background meetings, review draft plans, prepare comments, attend public hearing, report to Council Appeal Board: n/a	Originator: n/a Other Parties: get direction from legal counsel and Council, prepare notice, file appeal documents Appeal Board: receive notice, conduct preliminary review, initiate administrative preparations	Originator and Other Parties: preparation, negotiation meetings, draft summary notes and contents of agreement, edit agreement, present agreement to Council Appeal Board: detailed administrative arrangements	Originator and Other Parties: research, internal consultation, write evidence, attend hearing, write summary argument Appeal Board: conduct hearing	Originator and Other Parties: track progress, review decision, report to Council Appeal Board: review/discuss evidence, write and release decision, follow-up as required
% of Total Staff Days	4%	5%	9%	48%	34%

Figure 8b: Cost of Intermunicipal Dispute Appeal Hearing Process

Traditional Hearing Process	**Prepare, Circulate & Adopt Plan**	**Notice of Appeal**	**Pre-hearing Negotiations**	**Appeal Hearing**	**Follow-up**
Estimated Costs	$12,000	$21,000	$34,000	$106,000	$5,000
% of Total Costs	6.7%	11.8%	19.1%	59.4%	3%

Figures 8a and 8b provide a breakdown of the time and costs spent on each stage of the dispute resolution process. The goal of the design exercise was to create a system that allowed for the resolution of the dispute before it went to hearing.

Dispute Resolution Education

Dispute Resolution (DR) is a relatively new concept for people involved in local government. The DR Education component is designed to expose municipal leaders, administrative personnel, board members and other groups working with municipalities to alternatives to the traditional rights-based system. The education component increases the level of awareness, knowledge and interest in non-adversarial ways to resolve conflicts.

In response to a request for support from Alberta Agriculture, Food and Rural Development, the Ministry began co-sponsoring a two-day course in 1999, called Resolving Difficult Issues. The course, which introduces elected and non-elected community leaders to interest-based negotiation, has been offered every year since. Traditionally, it is held in five locations across the province each year. Courses have been held in Okotoks, Airdrie, Red Deer, Camrose, Lethbridge, Grand Prairie, Edmonton, Canmore, Cochrane and Calgary. Attendance at the course averages about 20 people; recently, whole councils have taken the course together.

The initiative has also sponsored conflict resolution training for Ministry staff. Three-day introductory courses have been offered annually; three advanced sessions have also been held.

Administration and Marketing Support

The Municipal Dispute Resolution Initiative has been supported through a variety of administrative and marketing activities carried out by the Planning and Coordination Unit of Alberta Municipal Affairs and its partners.

- Education booklet – In 1999, the *Let's Resolve* program partnered with Alberta Agriculture, Food and Rural Development to produce the booklet From Conflict to Cooperation. Stories in this booklet illustrate how interest-based negotiations have been used successfully to address a variety of disputes.
- Publicity campaigns – Media releases, articles and advertisements have been submitted to publications targeted at elected officials, municipal employees and municipal board members to advise them of Municipal Dispute Resolution Initiative successes and upcoming events (workshops and courses).
- Internal publicity campaigns – The Municipal Dispute Resolution Team submitted *Let's Resolve* to the Premier's Award for Excellence program. It was awarded Premier's Awards of Excellence in 2000 and 2002, in recognition of the program's benefits and its business model.
- Website – A website was created to promote the Municipal Dispute Resolution Initiative. The website provides articles about successful mediation as well as updates to the roster of qualified mediators and links to other alternative dispute resolution websites. (http://www3.gov.ab.ca/ma/ms/dispute/mediation/index.cfm)
- Promotional package – As part of our ongoing public education program, each year we publish a number of success stories that feature select mediations or local programs. The stories are circulated in a promotional package that is distributed at municipal conventions and posted on the Ministry's website.
- PowerPoint Slides – An interactive, in-person PowerPoint presentation has been developed for use at the workshops and courses.

- Public information campaign – In 2003, the initiative partnered with four government departments and agencies to produce 250,000 information cards. Distributed to Albertans through public libraries and MLA offices, the cards provide helpful tips on how to respond to conflict and also provide information about conflict management services provided by the provincial government.
- Presentations – The Municipal Dispute Resolution Team has made numerous presentations about the program to groups as diverse as a visiting delegation from the Harbin (China) Conciliation Centre, the Municipal Law Subsection of the Canadian Bar Association's Northern Alberta chapter, a delegation from Ukraine and the Alberta chapter of the Canadian Institute of Planners. A highlight was a presentation to the 2nd Vienna Conference on Mediation held in 2001. Regular presentations were also made to the Alberta Association of Municipal Districts and Counties and the Alberta Urban Municipalities Association.
- Skits – For our presentation to the AAMD&C convention in November 2001, the Ministry financed the production of three skits illustrating common causes of conflict in municipal councils. It was part of the release of the association's report on Council Conflict Resolution, which was adopted at the convention.

Appendix A: Background

In 1994, changes to the Municipal Government Act (MGA) gave municipal councils the authority "to govern municipalities in whatever way the Councils consider appropriate" (sec. 9). The MGA was amended in 1995 to include a process for resolving disputes between two or more municipalities regarding a statutory plan, land use bylaw or bylaw amendment. If the municipalities cannot resolve the problem, the MGA allows them to appeal to the Municipal Government Board (MGB). The Board has the authority to hear cases and render a decision. This decision is binding and can be appealed to the courts only on matters of law or jurisdiction.

In 1998, Alberta Municipal Affairs requested the assistance of the Alberta Association of Municipal Districts and Counties (AAMD&C) and the Alberta Urban Municipalities Association (AUMA) to develop guidelines for an initiative to promote the use of alternative dispute resolution methods, and mediation in particular, at the local government level. The input of these stakeholders and the support of the Alberta Arbitration and Mediation Society led to the creation of the Municipal Dispute Resolution Initiative.

In 1999, amendments to the Act required municipalities to attempt mediation before making an appeal to the MGB. This amendment formalized mediation as a required activity in the intermunicipal dispute resolution process. The decision to take this step was a direct result of three successful pilot mediations that the Minister had initiated.

The Local Dispute Resolution component originated with a request from a municipality for assistance in managing and resolving disputes with its ratepayers and other internal stakeholders. The success of the Intermunicipal Dispute Resolution initiative had led municipalities to request support from the Ministry to address disputes internal to the municipality. However, disputes such as bylaw infractions, contractual disputes and conflict between council and administration were not within the initiative's scope.

In 1999, two councillors from a rural municipality attending a "Finding Agreement on Difficult Issues" workshop (sponsored by Alberta Municipal Affairs and Alberta Agriculture, Food and Rural Development) requested a workshop for their council and administrative staff. After the workshop, the municipal district council asked for Alberta Municipal Affairs' assistance in incorporating new methods of dispute resolution into its daily operation.

The municipal district and the Municipal Dispute Resolution Initiative staff developed terms of reference for a pilot project and hired a consultant. A series of workshops with council, ratepayers and municipal staff identified the conflict resolution systems used by the municipal organization and highlighted areas where improvements could be made. The consultant's final report was received in July 2000. Council implemented a number of the recommendations and Alberta Municipal Affairs provided additional funding to assist the implementation of others.

Another pilot project was undertaken and results led to the creation of the Local Dispute Resolution Initiative in 2001. The detailed development of the initiative involved direct input from both the AUMA and the AAMD&C.

Appendix B: Program Philosophy

The Municipal Dispute Resolution Initiative is an innovative program that promotes the goals of Alberta Municipal Affairs and advances the people, prosperity and preservation components of the Government of Alberta's business plan. Our mission statement, vision, motto and values for the initiative are provided below. These statements guide the actions of Municipal Dispute Resolution Initiative team members as they work with clients, stakeholder groups and contractors to enhance regional cooperation and advance the Alberta Advantage.

The focus of Alberta Municipal Affairs' Municipal Dispute Resolution Initiative is on municipalities and municipal organizations within Alberta.

Mission

The mission of the Municipal Dispute Resolution Initiative is to work in partnership with Alberta's other provincial government departments, various organizations focused on local issues and the private sector to assist Alberta municipalities by encouraging intermunicipal cooperation and self-directed dispute resolution through interest-based negotiations and related appropriate dispute resolution activities to resolve local governance and management issues.

Vision

Our vision for the Municipal Dispute Resolution Initiative is for all municipalities in Alberta to have access to and the ability to use dispute resolution services that allow them to effectively and efficiently develop local solutions to local issues.

Service Motto

Local Solutions to Local Issues

Values

1. We make client service and confidentiality a priority.
2. We acknowledge the importance of goodwill among team members, clients and stakeholders.
3. We will inform all affected team members, stakeholders, contractors and clients of shared interests.
4. We will build trust by living up to commitments and avoiding surprises that may compromise the team members, stakeholders and clients.
5. We will involve all legitimate stakeholders to the fullest extent possible.